IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2943 of 1995

BHANWARA RAM & ANR
V/S
STATE & ORS

Mr. NS ACHARYA, for the appellant / petitioner

Mr. OP BOOB, AGA, for the respondent

Date of Order : 24.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioners by this writ petition seek to challenge the order Annex.9 passed by the Collector, Bikaner on 27.11.91, and Annex.11 passed by the Board of Revenue on 13.9.94 and also pray for a restrain against interference with cultivatory possession of the petitioners on the basis of the aforesaid orders.

The facts of the case as pleaded in the writ petition are that proceedings under ceiling law were initiated against one Smt.Sugni and the learned SDO declared certain lands surplus in the draft statement dated 6.12.74, and finally vide order dated 18.2.75 declared 100 bighas of land comprised in Khasra No.295 and 306 to be surplus. Accordingly, the land was mutated in favour of the State vide mutation dated 10.9.75. According to the petitioner, thereafter the land in Khasra No.295 was

allotted to the petitioner on temporary cultivation basis vide order dated 24.6.82 i.e. after about 7 years and later on vide order dated 27.6.92, khatedari rights were conferred by the Collector. These orders have been produced as Annex.4 and 5. It is pleaded that the petitioners were in possession of the lands soon after the allotment order in their favour and they are in cultivatory possession. According to the petitioner, an appeal was filed by the respondents No.5 to 7 Sohan Lal, Raja Ram and Mohan Lal being sons of Bahadur Ram Kumhar under Section 23 against the order dated 18.2.75 even without impleading Sugni as party, an application under Section 5, Limitation Act was, however, filed and this appeal was allowed by order Annex.9. This appeal appears to have been filed in June 1991 without considering the question of condonation of delay and without passing any order condoning the delay. It is also contended that no notice of the appeal was issued to the petitioners despite the allotments having been made in their favour way-back in the year 1982 and they being in cultivatory possession. It was alleged that the private respondents were not in cultivatory possession since 1982, still by wrongly claiming ignorance of the order passed in the ceiling proceedings against Smt.Sugni, while as per the order dated 18.2.75 the land vested in the State Government and the same could not be challenged after 16 years. Then after passing of the order Annex.9, the petitioners preferred appeal against the same before the Board of

Revenue and the same has been dismissed vide Annex.11. The orders are sought to be challenged inter-alia on the ground that the Collector had no jurisdiction to hear the appeal without condoning the delay as appeal could be filed within 60 days while the appeal was filed after about 16 years and during this interregnum period, i.e. after expiry of the limitation for filing appeal, the land was allotted to the petitioner and possession has been delivered. When the land was delivered to the petitioners way-back in the year 1982 it is inconceivable to believe that the respondents No.5 to 7 would not come to know of the factum of delivery of possession till 1991 or would not come to know of the order of the SDO. It is also contended that the petitioners being allottees, the order of the SDO could not be challenged without impleading them as party and in any case the petitioners had right to appeal to challenge the order of the Board of Revenue. It is contended that the orders impugned will have the effect of depriving the petitioners from their possession, hence they were required to be impleaded as party, and there is no justification whatever for directing that petitioners may apply for being impleaded as party in the proceedings before the SDO. Then provisions of Section 21 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 were invoked to contend that the land, which vested in the State Government had been allotted and that allotment could not be adversely effected by the challenge by the transferees from the land-

holder. Inter-alia with these grounds, it is prayed that the impugned orders be set aside.

No reply has been filed on behalf of the respondents despite service.

Arguing the writ petition, learned counsel reiterated the submissions and contentions raised in the writ petition and in addition, placed reliance on a judgment of this Court in Bhava Vs. State of Rajasthan & Ors. in S.B.Civil Writ Petition No.4295/1994 decided on 19th October 2005 to contend that therein contention was raised on the side of the respondents that the allottee from the State is also hit by the doctrine of lis pendence and that they do not acquire any such right of hearing in case as a result of final determination, the land acquired by the State and Government and allotted to other landless person under the Rule, is required to be returned back to the original holder or his legal representatives in case the determination is interfered with. This contention was negatived by holding that the principle of lis pendence is not attracted as, as on the day, the allotment by the State took place any lis relating to the matter touching their land should be pending somewhere or if any orders are passed, limitation for filing appeal must not have expired. It was further held that if by subsequent events, certain rights are effected, then such transfers if any have been

made in accordance with the fact situation existing on the date allotments were made cannot be considered to be hit by the doctrine of lis pendence, whereunder rights acquired by the transferrer during pendency of the writ petition could have been taken away without informing them on the basis of final result of the pending proceedings. It was further held that allotments having been made in favour of the petitioner therein by the State, of the land possession of which was taken by the State Government as a result of auction about surrender of the land given by Chandan Singh and no lis was pending. Then the petitioners had acquired interest in such land in respect of which they resort to any legal proceedings. In my view, the facts of the present case are closely similar to the facts of that case. In the present case also, the determination was made in February 1975 and land was resumed in favour of the State Government way-back on 10.9.75 vide mutation Annex.1 and the final allotment was made in favour of the petitioners as late as on 24.6.82 by which time the order dated 18.2.75 had acquired finality as no appeal against that order has been filed by anybody before any Court whatever. In such circumstances, simply because in June 1991 some transferees from land-holder choose to file appeal against the determination order and therein the matter is remanded by the Collector vide Anex.9, that can possibly not effect the rights of the allottees, who had been allotted land in the year 1982. Whatever be the out come of the remand order, in

any case the land allotted after resumption, to the petitioners at a point of time when the order of determination in ceiling proceedings was not under challenge, cannot be interfered with in any manner. This is precisely the dictum ultimately ordered in Bhava's case, where the order passed by the competent officer for return of the land, which is part of the allotment made to the petitioners therein or their predecessors was found to be unsustainable or capable of being given effect to and that extent was quashed.

Accordingly, following the dictum in Bhava's case, this writ petition is allowed, and it is clarified that whatever be the out come of the ceiling proceedings after remand pursuant to Annex.9, that will in any case not effect the allotments made in favour of the petitioners in the year 1982 when no appeal was pending against the order of original allotment. The parties shall bear their own costs.

(N P GUPTA),J.

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